IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 58 of 2002

JAITOON & ORS
V/S
ROOP CHAND

Mr. RK THANVI, for the appellant / petitioner

Mr. SUNIL MEHTA, for the respondent

Date of Order : 14.11.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

REPORTABLE

Heard learned counsel for the appellant.

By the impugned judgment, learned lower Appellate Court has decreed the suit for eviction, on the ground of second default i.e. the defendant has neither tendered nor paid rent for a period of six months, and earlier suit having been filed on the same ground, wherein on the first date of hearing the tenant had deposited the entire arrears of rent along with interest and costs, and consequently that previous suit was dismissed.

I find from the impugned judgment that the certified copies of the previous suit, and the order dismissing that suit, on account of amount having been deposited, to be finding place on record as Ex.-1 and Ex.-4 respectively.

It was contended by the learned counsel for the appellant, that this Court vide order dt. 22.2.2002 has noticed the contention, that though the rent was determined but by that order of rent determination, the trial court consigned the record of the suit of the plaintiff, without holding that the tenant committed any default, as provided under sub-clause (a) of sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, hereafter referred to as the Act, and therefore, according to the learned counsel, unless and until, the tenant commits any default in payment of rent, there cannot arise any occasion for asking or taking benefit under Section 13(6) of the Act. Reiterating the submission, it was submitted, that the appeal does involve the above substantial question of law, and is required to be admitted. It was also submitted that the learned trial court has believed the evidence of the appellant about tender and payment of rent, and the learned lower Appellate Court has come to its own conclusions against the appellant, without meeting the reasons given by the learned trial Court, therefore, also the finding is bad. The next submission made is, that the learned court below has erred in holding the defendant to have committed default in payment of rent for a period of more than six months, in the present suit.

The learned counsel for the respondent, on the other hand, supported the impugned judgment, and it was contended, that the appellant had earlier taken the benefit of Section 13(6)of the Act, and therefore, the suit has rightly been decreed. It was also submitted, that the learned lower Appellate Court has rightly appreciated the evidence about payment and tender of rent, and has rightly found the defendant to be defaulter.

I have considered the submissions, and have gone through the two judgments of the learned courts below.

So far as the finding about tender and payment of rent by the appellant, in the present suit, is concerned, a look at the impugned judgment shows, that the learned lower Appellate Court was conscious of its limitations, and while deciding issue no.3 learned lower Appellate Court has recapitulated the evidence, and finding the conclusions of the learned trial court to be inherently unsustainable, has held, that though the learned trial court has discussed the evidence, but the conclusions cannot be sustained, therefore, the learned lower Appellate Court proceeded to re-appreciate the evidence, and has thereafter decided the issue against the appellant.

In my view, the learned lower Appellate Court was perfectly right, and the appreciation of evidence, as made,

is also right, and does not require any interference, apart from the fact, that in my second appellate jurisdiction, it is not open to me to re-appreciate the evidence. Thus, the finding about the defendant being defaulter, in the present suit, requires no interference.

Now, I take up the first contention. In substance the contention of the learned counsel for the appellant is, that in the earlier suit, which was based on the ground of default, and on the first date of hearing the defendant deposited the amount, which he may have deposited by way of abundant caution, and despite not being a defaulter, and may be that, therefore, that previous suit has been dismissed, but then, there is nothing on record to show, that the defendant was given the benefit of Section 13(7) (as it then existed), and under Section 13(6) as it exists now, which corresponds to old Section 13(7). According to the learned counsel, it is only if that tenant had obtained such benefit, or benefit under Section 13-A, in respect of any such accommodation, if he again makes a default in the payment of rent of that accommodation for six months, that the tenant can be denied the benefit. Thus, since there is nothing to show that the appellant had obtained the benefit under Section 13(7) in the previous suit, the bar of the proviso to Section 13(6) now, does not come against the appellant.

In my view, may be that contention looks to be attractive, but then on a closer scrutiny, I do not find any force in the submission.

Learned counsel was requested to read the order-sheet in the previous suit, being Ex.-4, which the learned counsel read. From reading of the said order sheet, it transpires, that it was on the first date of hearing, that the defendant deposited all arrears of rent, and costs, and therefore, the plaintiff raised only objection of costs, and by Ex.-4, the learned trial court determined the cost also, and that was also paid on the same date, **and therefore**, the suit was dismissed. I may repeat, that it was on account of the defendant having deposited the rent on the first date of hearing, and having paid the cost, as determined, **therefore**, the suit was dismissed, and suit was not consigned to record, as contended in the order sheet dt. 22.2.2002. The question then is, as to whether the appellant can be said to have obtained the benefit of Section 13(7), as it then existed? To appreciate this contention, I may gainfully quote the provisions of Section 13(4), 13(5), 13(6) and 13(7) as they existed at the relevant time, which read as under:-

> "(4) In a suit for eviction on the ground set forth in clause (a) of sub-section (1), with or without any of the other grounds referred to in that sub-section, the tenant shall, on the first day of hearing or on or before such date as the court may, on an application

made to it, fix in this behalf, or within such time, not exceeding two months, as may be extended by the court, deposit in court or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of six percent per annum from the date when any such amount was payable upto the date of deposit and shall thereafter continue to deposit or pay, month by month, by the fifteenth of each succeeding month a sum equivalent to the rent at that rate.

(5) If in any suit referred to in sub-section (4), there is any dispute as to the amount of rent payable by the tenant, the court shall determine, having regard to the provisions of this Act, the amount to be deposited or paid to the landlord by the tenant, within fifteen days from the date of such order, in accordance with the provisions of section (4).

(6) if a tenant fails to deposit or pay any amount referred to in sub-section (4) or sub-section (5) on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

(7) If a tenant makes deposit or payment as required by sub-section (4) or sub-section (5), no decree for eviction on the ground specified in clause (a), of sub-section (1) shall be passed by the court but the court may allow such costs as it may deem fit to the landlord.

Provided that a tenant shall not be entitled to any relief under this sub-section if having obtained such benefit or benefit under section 13-A in respect of any such accommodation, if he again makes a default in the payment of rent of that accommodation for six months.”

It may be noticed here, that the provisions of the Act have undergone a sea change, inasmuch as under the Act, as it now existed to cover the present litigation, the provisions of Section 13(4) and (5), as they earlier existed have been completely replaced by the present Section 13(3), and the earlier Section 13(7) is in pari-materia with Section 13(6) now.

A look at the above sub-sections (4) and (5) of Section 13 shows, that under sub-section (4) it was the duty of the tenant, on the first day of hearing, or on or before such date as the court may, on an application made to it, fix in this behalf, or within such time, not exceeding two months, as may be extended by the court, deposit in court, or pay to the landlord, an amount, calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default, including the period subsequent thereto, upto the end of the month previous to that in which the deposit or payment is made, together with interest. Thus, under this provision it was the exclusive duty of the tenant defendant to calculate the amount, and deposit or pay to the landlord, on or before specified date, and the Court nowhere came into picture. Then, coming to sub-section (5), this provision contemplated the existence of dispute as to the amount of rent payable by the tenant, in which event the court was to determine, having regard to the provisions of

the Act, the amount to be deposited or paid to the landlord by the tenant, within fifteen days of such determination. Significantly before making compliance of sub-section (4) or sub-section (5), it was nowhere required to be adjudicated, as to whether the tenant has committed default within the meaning of Section 13(1)(a) or not. On the other hand, according to erstwhile sub-section (6), if the defendant fails to deposit or pay any amount referred to in sub-section (4) or sub-section (5), the Court was under obligation to strike out the defence against eviction. In this background a look at the provisions of sub-section (7), as it then existed, shows, that thereunder, according to that provision, if the tenant makes deposit or payment as required by sub-section (4) or sub-section (5), no decree for eviction, on the ground specified in clause (a), of sub-section (1), shall be passed by the Court, but the court may allow such costs as it may deem fit. In my view, this is the duty cast on the court, and lays down the course of action to be followed by the Court, in the event of a particular fact situation is found to exist. Sub-section (7) does not speak of conferment of any benefit on the tenant by the Court, inasmuch as, it does not contemplate, that even where the requirement of sub-section (4) and (5) have been complied, with still before dismissing the suit, filed on the ground of default, the Court shall have to record a finding, finding the tenant to be defaulter, and then to dismiss the suit, purporting to

give benefit of sub-section (7). On the other hand, as the judgments of this Court are, that the ground of default ceases to exist when the amount of rent and interest is deposited by the tenant, as provided under sub-section (4), and that no trial on the ground of default thereafter is contemplated. Whether the tenant has committed default or not need not be gone into in case the tenant conducts himself in the manner, as provided in the first part of sub-section (4) by depositing the amount of rent and interest within the time allowed by the Court. With the obvious result that where the suit for eviction is based solely on the ground of default in payment of rent, and therein the tenant has deposited the amount as required by sub-section (4), and does not join any other controversy on facts, the Court has no option but to proceed to dismiss the suit, obviously under sub-section 13(7), as it then existed, except however awarding cost to the plaintiff. I may refer to the judgment of this court in Shyamlal Vs. Upbhokta Sahakari Samiti reported in 1982 WLN-467. Obviously if that course of action is required to be adopted, and is adopted, it would tantamount to the tenant having obtained the benefit, within the meaning of provision to Section 13(7) as it then existed, and Section 13(6) as it now existed.

In the present case also, what had happened in the previous suit was, that admittedly the suit filed only

on the ground of default, and it was on the first date of hearing that the tenant deposited the entire arrears of rent and interest vide Ex.-4, and on the amount so having been deposited by the tenant, the learned trial court awarded cost to the plaintiff, and dismissed the suit for eviction, therefore, the obvious consequence is, that within the meaning of proviso to Section 13(6), as it now exists, the defendant falls in the category of the person, who has obtained such benefit in the previous suit.

This is one aspect of the matter. The other equally important aspect of the matter is, that it is established law right upto the Division Bench of this Court, as laid down in M/s. Batlibai & Co. Ltd. Vs. Govind Narayan, reported in 1981 RLW-411, so also Shobh Raj Vs. Bhanwar Lal, reported in 1974 RLW-521, that for the purpose of considering the question, as to whether, on the face of provisions of sub-section (6), the tenant is entitled to benefit or not, all that is required to be seen is, as to whether the earlier suit, based on default, had been dismissed, on account of defendant making payment, or not, and it is not required to be established, whether in the previous suit, or in the present suit, that the defendant was a defaulter within the meaning of Section 13(1)(a), in the previous suit. In that view of the matter, it is not required to be gone into, as to whether in the previous suit, the appellant was a defaulter or not.

Admittedly, the earlier suit was the suit for eviction based on the ground of default only, and was dismissed, only because, the appellant deposited the amount, as required by Section 13(4), as it then existed.

In view of the above, I do not find any force in this submission of the learned counsel for the appellant, nor do I find any error in the finding of the learned lower Appellate Court.

The appeal thus does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

However, at the request of the learned counsel for the appellant, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further

continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/